D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 166/2004

OM PRAKASH VS. RSRTC & ORS.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 543/2004

BABULAL SHARMA VS. RSRTC & ORS.

DATE OF ORDER : 08.09.2005.

**HON'BLE MR. RAJESH BALIA,J.**
**HON'BLE MR. R.S. CHAUHAN, J.**

Mr. R.S. Saluja for the appellant.
Mr. Sangeet Lodha for the respondents.

Heard learned counsel for the parties.

These two special appeals raise a common issue about the postings of Booking Clerks at the Bus Stands managed by the Rajasthan State Roadways Transport Corporation (RSRTC).

The dispute raised in these two appeals is in respect of two separate petitioners, though the controversy is not first of its kind and there are chain of decisions earlier thereto dwelling on the same controversy. As the reply has been submitted by the Corporation only in S.B. Civil Writ Petition No.2679/2004 (decided on 20.7.2004), out of which D.B. Civil Special Appeal No.543/2004 has arisen, we may first notice the facts

whose averments have been made in the Writ Petition No.2679/2004.

Facts about D.B. Special Appeal (Writ) No. 543/2004 (S.B. Civil Writ Petition No. 2679/20004 Babulal Sharma vs. State & ors.)

The petitioner was appointed as a Conductor under the Corporation on 1.4.77 in the regular pay scale. Until 1984-85, he worked as Conductor on different routes. Under Service Regulation Chapter 20, was included a post by nomenclature "Adda Conductor" (Parichalak) which name was re-designated as Booking Clerk. The Nomenclature was changed by the Board vide Circular dated 13th March, 1980 which was issued in pursuance of Resolution of the Board dated 16.4.79 affirming the settlements arrived at between different Unions working amongst the different Departments of the Corporation. In respect of the Charter on 21.2.1979 minutes were drawn on 22.2.1979. The said Circular dated 13.3.80 has been placed on record as Annexure R/1.

The significant conditions of Annexure R/1 were firstly that apart from changing the Nomenclature of post

of "Adda Conductor" to the Booking Clerk, it was envisaged that a State Level Seniority list shall be prepared of all the Conductors working under the Corporation and they shall be appointed in order of their seniority as Booking Clerks. It was given out that no new posts shall be created. As a matter of fact, the post of Booking Clerk which was earlier post of Ministerial Staff be treated as a dying cadre in other words new recruitment to the original post of Booking Clerk was stopped and in its place the need of filling up the post of Booking Clerks at various Bus stands was to be fulfilled by manning the post from amongst senior conductors on the post of Booking Clerk in order of their seniority. It was also envisaged in the Order dated 13.3.1980 that those conductors who were not interested to discharge the duties or the responsibilities of Booking Clerk, they may continue to work as Conductors, but they will be deprived of promotion in future.

Another Circular dated 15.12.80 (Annexure R/2) was issued as a policy matter by the Corporation in pursuance of the settlement arrived at between the workmen and the employer through a committee constituted in terms of settlement dated 21.2.79. Thereafter, the embargo on promotion that "unless a

Conductor is appointed and discharging his duties of Booking Clerk", was removed. These conditions were reiterated in later Circular dated 21.8.81 (Annexure R/3). The embargo against the promotion on "Adda Conductor" was removed by Circular dated 24.10.91 (Annexure R/4).

These Circulars clearly gave out that primarily it was the necessity of the Corporation to fill up the post of Booking Clerks from amongst the Senior Conductors who are brought on the post of Booking Clerk, which otherwise could not be filled by Booking Clerks cadre, which had been declared as dying cadre. This also cannot be disputed and denied that for advance booking of tickets for bus journey and booking of seats at Bus Stand itself, there has to be some man at the Booking Counter. It is not the case of the Corporation that there is no advance booking of seats for any journey or that all tickets are required to be issued by the Conductor to passengers on Board only.

Therefore, this alternative arrangement was necessity of the Corporation, which brought about change in the policy that instead of having a direct recruitment to the post of Booking Clerk as a part of Ministerial Staff of the Corporation as it was earlier, it came to be filled up

from amongst Conductors in order of their Seniority. To call it otherwise, it was a parity of giving Senior Conductors an office parity to discharge the work of Booking Clerk at Bus Stand. Bus Stand is colloquially known as "**Bus Adda**". That explains earlier nomenclature of "Adda Conductors".

It was in this scenario, the petitioner came to be posted as Booking Clerk.

From 1984-85, the appellant-petitioner was appointed as Booking Clerk which was a post encadred under the Conductor Staff and since then he was continuing working as Booking Clerk until by order dated 29.6.2004, which has been passed purportedly in compliance of the directions issued by Corporation on 2.7.2003 directing the petitioner that with immediate effect he be reverted to the post of conductor on route.

This led to filing of S.B. Civil Writ Petition No.2679/2004. (DB Special Appeal (Writ) No. 543/04).

The petitioner has referred to in his petition two decisions of the Rajasthan High Court, one a Single Bench decision in Rajasthan State Roadways Employees

Union (AITUC) & others vs. Rajasthan State Road Transport Corporation & others reported in 2002(2) WLC (Rajasthan) page 166 and second in Bhagwan Singh & 5 others vs. RSRTC and another reported in 2002(1) WLC (Rajasthan) page 554, in which certain directions were issued by the Court to deal with the controversy arising out of reversion of the Booking Clerk (Formerly known as "Adda Clerks") in the background noticed above. For regulating the circumstances in which incumbents were brought as Booking Clerk who were reverted back to be posted as conductor.

Adverting to the reply submitted by the respondents, it is also apposite to notice that a conductor on route is required to have a license of conductor and is also required to carry with him a Conductor's badge under the Motor Vehicles Act. Keeping in view this requirement for a Conductor on route, the Corporation by another order has directed that the conductors who are posted as Booking Clerks shall not be required to get their Conductor's license renewed, nor they will be required to carry Conductor's badge.

The primary contention of the petitioner, apart

from the aforesaid background emerging from the pleadings and the proceedings, which we shall presently refer to, was founded on the basis that the impugned order is contrary and in violation of the terms and conditions imposed by this Court by the aforesaid two decisions referred to in the memo of petition in dealing with the situation where a Senior most conductor amongst the persons who have been posted from the post of Conductor to the post of Booking Clerks, if there are surplus Booking Clerks, the junior most conductor posted as a Booking Clerk, can be reverted back to be posted as a conductor in the first instance.

While the facts noticed by us above, including the existence of two judgments, are not a matter of contentions between the parties, the principal burden of the reply is that the petitioner was not initially appointed on the post of Booking Clerk and there is no post with the nomenclature of the Booking Clerk in the Schedule-I to the Rajasthan State Transport Employees Service Regulations, 1965 and, therefore, it is absolutely incorrect to state that the petitioner was ever absorbed on the post of Booking Clerk. However, the fact is not disputed that under the Heading Traffic Staff, post of “Adda Conductor”, which post

is re-designated as "Booking Clerk" in the circumstances noticed above, and Conductor are mentioned and exists which carry same pay scale.

Apparently, the reply is contradictory in terms which denies the existence of the post of Booking Clerk under the Regulation and on the other hand, it admits in re-nomenclature of post of Adda Clerk as Booking Clerk. However, we can say that the post of Booking Clerk was existed in original in Ministerial Clerical cadre and amongst Traffic Cadre existed a post of "Adda Conductor". "Adda Conductor's" posts under the Traffic Staff was re-designated as Booking Clerk as aforesaid, and was envisaged to be manned from amongst conductors in order of their seniority.

It is difficult to understand the argument that merely because change of nomenclature by which the post of Booking Clerk was filled up under the new arrangement, could effect the existence of post of Booking Clerk. To run the booking counters for the public traveling at the Bus Stands, cannot be said to be a non-existing post. It is not difficult to envision issuance of tickets at booking windows by a person, in whatever manner may be he designated.

Be that as it may, that dispute is not really the bone of contention. The bone of contention is findings by the learned Single Judge that the post of Booking Clerk and Conductor as is now in existence are interchangeable post in the same pay scale and transfer from one duty to another duty namely from the booking window to the on route conductor is not a transfer; nor it affects the rights of the petitioner ever adversely in the matter of promotion or in the service conditions; or no injury is caused to the petitioner which warrants interference.

The second burden of the respondents' reply is that after giving some details about the background in which the settlement arrived at in the Circular dated 13.3.1980, which has been referred to above, is that in pursuance of requirement of preparing a seniority list of conductors, Adda Clerk/Booking Clerk's seniority was also prepared and Adda Clerk appointed up to 31.12.1975 only, which accounted for 1998 were included in the said list. No one appointed after 31.12.75 has been included in the seniority list. The seniority list was prepared vide order dated 21.8.1981. It has also been brought on record by the respondents that 540 conductors have been retained as Booking Clerk on various Bus Stands or Booking

Windows in the State. Reference was also made to the Circular dated 17.7.99 (Annexure R/5) stating that 540 conductors are discharging office duties which is affecting the conduction of the vehicles on the routes and, therefore, directions were issued that leaving aside (i) the conductors who are working as Booking Clerk under the directions of the Court, (ii) the conductors who are physically handicapped or (iii) who has obtained interim orders from the Court, may only be appointed/retained in office duties and lady conductors may be appointed only on enquiry windows and not in the office. Rest all may be redeployed as conductors.

Yet another Circular issued on 18.9.2000 (Annexure R/6) referring to the decision of Single Bench decision in S.B.Civil Writ Petition No.5737/96, appeal against which was dismissed on 18.9.98, opined that in terms of the aforesaid judgment, the Corporation has right to take the work of conductors from the persons appointed as Booking Clerk, therefore, the Corporation is free to redeploy the Booking Clerk working on various booking windows as conductors. In other words by this order, the Corporation issued instructions not to deploy the conductors as Booking Clerk and those who are already

deployed should be withdrawn except those who are working under the orders of the Courts or physically handicapped or lady conductors.

Finally a Circular was issued on 02.7.2003 (Annexure R/7) whereby the Chief Managers of various depots of the Corporation have been directed that only the conductors appointed up to 31.12.75 should be kept on the post of Booking Clerk and all the conductors who are appointed on or after 1.1.76, if they are working on the post of Booking Clerk, may be removed immediately and they may be sent on the route to discharge the duties of the Conductor. In special circumstances, if the work of booking clerks required to be taken from the conductors, then the same may not be taken except with the prior permission of the Head Quarter and the intention was also given out to make appropriate application in pending cases for vacating the interim orders at various stages of pending litigation.

On these premises, about the Division Bench decision issuing directions in this regard in Bhagwan Singh's case referred to in the petition, it has been stated in return that the Division Bench in Bhagwan Singh's case

(supra) has not taken notice of the judgment of the learned Single Judge in S.B. Civil Writ Petition No.5737/96 decided on 3.8.98 Surendra Singh Chauhan vs. RSRTC and others. In other words, the reply conveys that in the opinion of the Corporation, since the Division Bench in Bhagwan Singh's case having been founded without noticing the earlier decisions in Special Appeal No.755/98 affirming the judgment of the learned Single Judge in S.B. Civil Writ Petition No.5737/96 decided on 3.8.98 in Surendra Singh Chauhan's case, directions issued by the Court are not binding on the Corporation and it may not be binding precedent, without expressing in so many words.

**FACTS ABOUT OM PRAKASH (DB CIVIL SPECIAL APPEAL (WRIT) NO. 166/04 (SB CW NO. 4067/2004).**

We may now notice the facts of D.B. Civil Special Appeal No.166/2004 arising out of the judgment dated 25.2.2003 passed by learned Single Judge in S.B. Civil Writ Petition No.4067/2002. In this case, the petitioner Om Prakash was appointed on the post of Conductor under the Corporation w.e.f. 1.1.80 and he was working on the Booking Office since 15.10.88. He was

transferred to Manpur Booking Window vide order dated 7.2.2002. Thereafter, vide order dated 23.8.2002, the petitioner was ordered to be posted on route for operation of booking window Manpur, which according to the petitioner was contrary to the Circular dated 10.5.96 issued by the Corporation, and contrary to prevailing policy that the senior conductors are to be posted at booking windows and junior conductors are to be posted on the route. Namely the policy has been envisaged firstly by Circular dated 13.3.80 and continued vide Circular dated 10.5.96. The petitioner in this case pointed out that at least four persons junior to him namely (1) Nisar Mohammed (2) Dilip Baroth, (3) Mahender Singh and (4) Mahesh Soni were retained as Booking Clerk and has not been asked to go on field. He has challenged the said re-deployment as Conductor on route against the policy of posting senior conductors at the booking windows and only the junior conductors on route.

No reply was filed in the writ petition. However, the learned Single Judge vide judgment under appeal held that the petitioner is not adversely affected and there being no statutory right according to which he was required to be continued as Booking Clerk, the

petition was dismissed. However, the respondent was directed to consider the representation/legal notice within a period of two weeks from the date of filing the certified copy of the order about re-considering his case i.e. his transfer on personal reasons pointed out by him.

It appears that none of the chain of the judgments which we shall presently notice, and which were very much in existence to be referred to at the relevant time before the learned Single Judge have not been brought to the notice of the Court in either case.

In S.B. Civil Writ Petition Nos. 1837/88 Mohan Lal Sharma & 3 ors. vs. The Rajasthan State Road Transport Corporation and another, the issue was first considered by a learned Single Judge. .

This was a case in which the petitioner and three others were appointed as conductors in the year 1975. The aforesaid judgment is referred in four separate writ petitions, in which the petitioners were appointed as conductors in the year 1975. After referring to the chain of events relying on the settlement arrived at between the parties on 21.2.79 which was approved by the Board of

Directors of the Corporation vide resolution dated 16.4.79, the Court noticed that in pursuance of the policy, a state wise seniority list of the conductors was prepared, both the petitioners were earlier assigned the duties of Booking Clerks notwithstanding their appointments as conductors and they continued to work as Booking Clerks in pursuance of the Circular issued by the Corporation.

The Court also noticed that since their appointments were made as Booking Clerk, they did not get their license renewed as per the Rules and they did not have in present time valid license under the Motor Vehicle Act, such license must subsist till they hold the posts of Conductor. The petitioners have stated that they did not get their licenses renewed after their posting as Booking Clerks. In first two cases such renewal was not got done for last six years and in other two cases for over four years. In these circumstances, when on 2.6.88, the Depot Manager, Jaipur (West) issued order and directed the petitioners to report for duty as conductors, it was challenged. The plea of Corporation that cadre of Conductors and Booking Clerks is common and do not exist independently was negatived by the Court. The Court said after noticing the reply submitted in writ petition filed by

Shiv Dayal and another that

> "although pay scales of the two posts are identical, their duties are vastly different and that procedure prescribed is to be followed for conversion of a Conductor to a Booking Clerk. In the face of averments made in the reply, it is not possible to accept the submissions made by the learned counsel for the respondents that cadre of Conductors and Booking Clerks is common. This conclusion is fortified by the fact that the Corporation itself issued circular in the year 1982 and called for option from the existing Conductors to be posted as Booking Clerks. If there had been a common cadre of Conductors and Booking Clerks with interchangeability in their postings, there was no occasion for the Corporation to have invited options from existing Conductors to be posted as Booking Clerks. If the cadre was common, it was open to the Corporation to post a Conductor as a Booking Clerk and vice-versa. Another important factor which makes the two cadres distinguished and independent, is that a person holding the post of Conductor is required to possess a license under the Motor Vehicle Act and such license must subsist till he holds the post of Conductor. All the petitioners have stated that they did not get their licenses renewed after their posting as Booking Clerks. In first two cases such renewal was not got

done for six years and in other two cases for over four years. Their statement has not been controverted by the respondents. If the petitioners did not hold a valid license to act as Conductors, they were liable to be prosecuted if they were treated as part of the cadre of Conductors and could be posted by the Corporation as Conductors according to Corporation's sweet will. I am not prepared to accept submission of the respondent Corporation and its authorities that the petitioners are to blame themselves if they did not get their licenses of Conductor renewed. It is not possible to comprehend that a public authority like the Corporation would allow in its service those Conductors who do not hold valid license. All this goes to show that the petitioners had become member of the cadre of Booking Clerks."

On this premise, the Court held that

"once the petitioners stood absorbed as Booking Clerks and they have become member of the cadre of Booking Clerks, the Corporation could not have transferred/posted them as Conductors except with their consent. Transfer of an employee outside his cadre indirectly results in termination of his service in the existing cadre and that cannot be done

> unilaterally by the employer. This principle has been enunciated in State of Rajasthan vs. Kailash Chandra Jain and others 1972 WLN 533. It is thus held that the transfer/posting of the petitioners as Conductor is without jurisdiction and is arbitrary."

Thus, the transfer was held to be not maintainable and the posting as Booking Clerk, appointed to the different cadre, notwithstanding in the same pay scale, was also set aside.

In yet two S.B. decisions of this Court in S.B. Civil Writ Petition No.4122/2000 (Radhey Shyam Sharma and others Vs. RSRTC), S.B. Civil Writ Petition No.3126/91 (Mohan Lal Soni Vs. RSRTC and others) did not consider the post of Booking Clerk to be a different cadre post.

However, the other two learned Single Judges still found that the petitioner in each case was entitled to relief because of the settlement arrived at between the petitioners' Union and the Corporation by its own actions and omissions in making the appointment to the post of Adda Clerk, re-designated to Booking Clerk was not a post of direct recruitment from the open market, but from the

appointment amongst senior most Conductors and Booking Clerk and therefore, the petitioners were held entitled to relief to continue on the post so long as no person junior to him has been left out, if he was otherwise senior and willing to serve as Booking Clerk.

Then matter was considered by Division Bench in Bhagwan Singh & 5 ors. vs. RSRTC and Another. reported in 2002(1) WLC page 554 wherein all the aforesaid decisions were referred to and though the Court was of the opinion that primarily because of the fact that the post of Booking Clerks was to be filled in by the direct recruitments under the Subordinate Ministerial Services and under the direct staff cadre, but under the Traffic staff cadre, Adda Conductors were considered as two posts carrying the same pay scale and appointment to the Conductor / Adda Conductor as well as the Booking Clerk was 100% by direct recruitment in all cases where conductors claiming to be continued as Booking Clerk. Those who had been given the duties of "Adda Conductor" were held to be not part of two different independent cadres.

The Division Bench in Bhagwan Singh's case

(supra) found that the post of Adda Conductors are falling within different name on the basis of the nature of work carried out by them. However, in the end result, the Division Bench also referred to the settlement entered into between the parties and respondents Corporation on 22.3.79 under which it was agreed that the nomenclature of "Adda Clerk" shall be changed as "Booking Clerk" and directed the respondent Corporation to prepare a seniority list of Conductors and according to depot-wise seniority they shall be posted on the post of Booking Clerk. It has been specifically mentioned that

> "the post of Booking Clerk is not a new creation but only a change of nomenclature from the post of "Adda Conductor" to Booking Clerk. The employees who have been posted on the post of Booking Clerk i.e. the old post of "Adda Conductor" shall only be entitled for promotion. The Conductors who are not willing discharge to work of the post of Booking Clerk, although senior, may remain on the post of Conductor but they shall not be entitled for further promotion. The conductors, who want to be posted as per their seniority on the post of Booking Clerk, shall submit their option to that effect in a prescribed option form. The matter regarding giving of additional allowance for working on the post of Booking Clerk is under

consideration. The option form which has been supplied to the Conductors shows that if the option is not exercised within the time stipulated then it shall be deemed that, according to the seniority of Conductor, they are willing to be posted on the post of Booking Clerk. The Conductor according to his seniority is not willing to be posted as Booking Clerk may fill his option expressing his unwillingness to join on the post of Booking Clerk."

The Court also noticed that

"by order dated 2.8.1981 it is clarified that in the respondent Corporation there are 1740 sanctioned posts in Adda Conductor, out of them 1576 post are permanent and 164 posts are temporary. As per the seniority list prepared by the respondent Corporation, 1750 conductors are being posted on the post of Booking Clerk. The Conductors who have given their option not to work on the post of Booking Clerk, shall not be posted on the post of Booking Clerk. Thereafter, the respondent Corporation has issued an order dated 24.10.91whereby the respondent Corporation has withdrawn the condition that the employees who have not been posted on the post of Booking Clerk shall not be entitled for promotion on the higher post."

On this premise, the Court found that the respondent Corporation cannot straightway ask the employees, who are working on the post of Booking Clerk for all these years and that too under the agreement entered into between the Union and the respondent Corporation, to work on the post of Conductor without taking into consideration the length of service they have carried on the post of Booking Clerk. It was observed by the Court as under:

> "Having considered all the aspects of the matter, particularly the agreement arrived at between the Union and the respondent Corporation, we are of the view that similar nature of directions were issued to the respondent Corporation by the learned Single Judge in S.B. Civil Writ Petition No.3126/1991 (Mohan Lal Sharma and 3 others vs. RSRTC & others) decided on 22.1.97 along with batch of petitions, shall meet the ends of justice and, thus, we set aside the impugned judgment of the learned Single Judge and direct that
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> i. The appellants, who are working on the post of Booking Clerk on a clear vacancy, shall not be posted as Conductors on transfer;
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> ii. If the posts of Booking Clerk, on which the

appellants are working, are not available, the respondent Corporation shall first adjust the appellants in their order of seniority on vacant posts of Booking Clerk at any other Depot of the respondent Corporation in the State of Rajasthan and the appellants shall give their option to work, at any such Depot where the vacancies of Booking Clerk are available, within a period of four weeks from today. While exercising the option, the appellants may give the name of three places of their preference where the posts of Booking Clerk are vacant at any other Depot of the respondent Corporation in the State of Rajasthan. The respondent Corporation shall see that the preference given by the appellants is given due weightage, if it is administrative possible.

Iii) After above mentioned adjustments it is found that the number of posts of Booking Clerk available with the respondent Corporation are less than the number of the Conductors occupying the posts of Booking Clerk, then the junior most Booking Clerk shall first to be posted on the post of Conductor and so on;

(iv) In the eventuality of post/posts of Booking Clerk becoming available later on, then senior most Conductor amongst the persons who have been posted from the post of Booking Clerk to the post of Conductor, shall be posted first as Booking Clerk and that shall be followed

till all those persons are not adjusted on the post of Booking Clerk, subject to their giving consent for such posting.

In view the aforesaid decision of the Division Bench in Bhagwan Singh's case (supra), it is apparent that while the Court found that though the post of Conductor and Booking Clerk belonging to the same cadre, but nonetheless since the appointment as “Adda Clerk” was to be made only from the Senior Conductors as per the settlement and the subsequent development that has taken place in respect of the settlement, it would be unjust to transfer the persons working on the post of “Adda Clerk” re-designated as “Booking Clerk”, therefore, it needs to safeguard their position.

It is significant to notice that the order dated 2.8.91 issued by the Corporation clearly indicated requiring the senior Clerks to discharge the duties of Booking Clerks in view of Booking Clerk post declared in the nomenclature as dying post. There was necessity to post the Booking Clerks at various Bus Stands throughout the State that notwithstanding closing the fresh recruitment of the Booking Clerk as a Ministerial Staff, the same were taken

from the Senior Conductors by giving them the duties of the Booking Clerks. It was to fulfill this need and to make up other existing posts of the Conductors, they were taken to work at the Bus Stands. It was given out that unless a conductor has worked as Booking Clerk in pursuance of the settlement he shall not be eligible to be considered for promotion on the next higher post and if that were so, it must be held that it was not merely on account of administrative exigency but on account of basic need. The work of Booking Clerk which was heitherto separated from Ministerial Staff was to be entrusted to the Conductors by making up a separate procedure of appointment, assigning the duties of the Senior conductors by withdrawing them from field duties.

It may be true that the post of Conductor/Adda Clerk or Booking Clerk falls within the same bracket. The senior Conductors are called Adda Conductors to whom new nomenclature have been given as Booking Clerk carrying the similar pay scale, but the distinction was clearly made out between the persons who could be appointed to take the field duties and who could only be appointed as Booking Clerk and it was being made clear by the settlement entered into between the Union and the

respondent Corporation by the aforesaid orders dated 2.8.81 and 22.3.79 that only the senior conductors will be assigned duties of Booking Clerk, they could opt for Booking Clerks' jobs voluntarily but otherwise it was a compulsory exercise for the senior most conductors to come to the Booking window. If it was sought to be made compulsory, this explains the directive that the Conductors who are not willing to discharge work on the post of Booking Clerk, although senior, may remain on the post of Conductor but they shall not be entitled for further promotion. Thus, it cannot but be said that in the background of the case, the Corporation did give out by its own directions that the Conductors posted as Booking Clerks were not required to renew their Conductors license hence forth.

Taking any other view would compel the Booking Clerks who were not otherwise legitimately expected to come back to the field work, to obtain the conductors license notwithstanding under the settlement and according to the prevailing practice countenanced by the Corporation itself, the senior conductors were only required to discharge the duties of Booking Clerks on windows.

In that view of the matter, the directions issued by this Court on the aforesaid controversy ought to have given quietus to this controversy unless the foundation of justice was renowned by some competent legislative measure. The direction in Division Bench decision in Bhagwan Singh's case cover the ground comprehensively.

Before parting with the discussion, we may notice that notwithstanding finding that Booking Clerk and Adda Conductors are not independent posts, the Court in Bhagwan Singh's case also ultimately accepted that the post of Booking Clerk is to be manned from the senior most conductors and accepted that notwithstanding both the posts belonging to the same cadre carrying the same pay scale yet appointment to the Booking Clerk is to be made from amongst senior most Conductors and once a person is appointed as Booking Clerk in the aforesaid manner, he cannot be asked to revert to the post of on route conductor, so long there is a vacancy of Booking Clerk at any place in Rajasthan, and the person holding such post is willing to discharge such duties at available vacancy. If at all some one has to be reverted it must be junior most conductor holding the post of Booking Clerk for

whom no post exists which he is willing to hold.

Yet again identical controversy came before another learned Single Judge in case of Rajasthan State Roadways Employees Union (AITUC) & ors. vs. Rajasthan State Road Transport Corporation & ors. Reported in 2002 (2) WLC (Raj.) page 166. This petition came in the wake of order dated 3.4.2001 passed by Chief Manager of Corporation at the instance of Union. It was filed by the Rajasthan State Roadways Employees Union which was decided on 18.5.2001 along with a group of petitions challenging the same order by individual petitioners. By the impugned order, the Corporation has decided to depute the Booking Clerks as Conductors for one month on experimental basis and if within the said period of one month, the income on the route is increased, all such Booking Clerks who are deputed to work as Conductors, and who show improvement in the income would again be posted against the post of Booking Clerk for three months and in case there is no increase in the income, said persons were not to be posted against the post of Booking Clerk.

In view of the said decision taken on 3.4.2001,

certain Booking Clerks in different depots were deputed to go en route as Conductors. That led to filing a number of writ petitions, which came to be decided by the aforesaid decision on the petitions filed at the instance of booking clerks through their Union AIUTC. This judgment again noticed in detail the backdrop in which the Conductors were being appointed as Booking Clerks somewhere since prior to 1979 and after settlement arrived on 21.2.79.

The learned Single Judge referred to the decision rendered by this Court in S.B. Civil Writ Petition No.3992/98 – Shiv Dayal Vs. RSRTC and ors., and other connected matters. S.B. Civil Writ Petition No.1837/88 Mohan Lal Sharma Vs. RSRTC and ors., S.B. Civil Writ Petition No.1838/88 Shree Narain Sharma Vs. RSRTC and S.B. Civil Writ Petition No. 4125/88 – Rajasthan Parivahan Employees Union Vs. RSRTC & Anr. all decided on 23.4.93 collectively 1994(3) WLC (Rajasthan) 564. The learned Single Judge also noticed that Special Appeal filed against the aforesaid judgment was dismissed on 30.8.96.

He also referred to the judgment in S.B. Civil Writ Petition No. 3126/91 where directions were issued on consensus, to depute the booking clerks at any place

where the vacancy of booking clerks are available and if number of persons working as booking clerks are found in excess of existing posts, then to post such persons as conductors who are junior most as Booking Clerk and if such Booking Clerk are posted as Conductors their lisences of the conductors are to be renewed. The directions issued in this petition were approved by Division Bench in Bhagwan Singh's case (supra).

The above judgment was followed in S.B. Civil Writ Petition No.3272/98 decided on 27.7.99.

In this premise, the Court found that

> "After determining the vacancies of Booking Clerks in various depots, the senior most conductors are to be given the designation of Adda Conductors and Booking Clerks and there would have been no difficulty what-so-ever either in regard to promotion or posting of such persons. If any of such Conductor even amongst the seniors chooses to do the duties of the Conductor only, he is at liberty to do so and his chances of consideration to promotion on the post of ATI are not affected provided he fulfills the other qualifications.

The learned Single Judge then concluded as under:

> "It is held that the Adda Conductors/Booking Clerks once having brought on the list as Adda Conductors or Booking Clerks against the vacancies available and so posted and license of their Conductors having not been renewed for years together, such Booking Clerks cannot be asked to revert back even for temporarily to do the duties of the Conductor as has already been held by this court in S.B. Civil Writ Petition No. 3186/97 that the Booking Clerks can be appointed where-ever the vacancy is available and if there are surplus Booking Clerks, the junior most on the list can definitely be asked to do the duties of Conductor after getting his license renewed."
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> The writ petitions were allowed.

From this background of the decided cases, the question arises whether the post of Booking Clerk has been held to be different and independent that the post of the Conductor or it is part of the same cadre. There is a unanimous opinion, except in the case of Surendra Singh Chauhan, that in terms of settlement and the different

Circulars only senior most conductors are to man at the booking windows or to discharge the duties of Booking Clerk and they cannot be reverted to en route duty until they opt for it without forfeiting the right of promotion to the next higher post. But in case of non furnishing of option, they are not absolved from discharging the duties in order of seniority to do the work of Booking Clerk for which they have been given appointment as Booking Clerk and their conductor's license had come to an end. They cannot be compelled to get their license renewed and go to en route duties at that stage.

It is apparent that judgment under appeal in each appeal did not notice any of these judgments and therefore, in our opinion, cannot be sustained on that ground also.

This brings us to consider the decision of this Court in Surendra Singh Chauhan vs. RSRTC (SBCW No.5737/96 decided on 3.8.98. The learned Single Judge has passed the following order dismissing the writ petition no. 5737/96 dated 3.8.98 filed by Surendra Singh Chauhan:

"Admittedly, the petitioner has been appointed on the post of Conductor though he has been posted as Booking Clerk from time to time. However, through-out he has been treated as Conductor. There is nothing on the record to show that the petitioner was ever absorbed as Booking Clerk as in pursuance to policy decision taken by the Corporation in the year 1980, more so **when there is specific denial of the respondents that the petitioner never gave such option to be absorbed as Booking Clerk.** Merely working as Booking Clerk from time to time does not create any right in favour of the petitioner to be treated as Booking Clerk for all times to come.

Further more it has been submitted on behalf of the respondents that pay-scales and promotion avenues for both the posts are same only the nomenclature is different. The Conductor is to work on route; whereas the Booking Clerk has to perform the duties in the booking office. The seniority is also common for both the posts. Since the petitioner has only been asked to be deputed on route vide the impugned order, I find no illegality in the same so as to call for any interference by this court under its writ jurisdiction. Judgments cited by the learned counsel for the petitioner are not applicable in the facts and circumstances of the present case.

Accordingly I find no merit in this writ petition and the same is hereby dismissed."

The intention of the respondents has been suggested in the reply by referring to Bhagwan Singh's case that since Division Bench decision of this Court in Bhagwan Singh's case, though referred to Single Bench decision in Surendra Singh Chauhan's case, yet it has not noticed that the judgment in Surendra Singh's case has been affirmed by the Division Bench, therefore, the judgment by Division Bench is its affirmance was clearly to treat the Bench decision in Bhagwan Singh's case as contrary to Surendra Singh Chauhan's case and per incurioum and not binding.

We have been taken through the judgment of the Division Bench in Surendra Singh Chauhan's case. The Division Bench has not spelt out any reason of its own, but has simply disposed of the appeal by saying that **"after going through the findings of the learned Single Judge, we are of the opinion that dismissal of the writ petition of the appellant was in accordance with law and we do not find any merit to interfere with the order of the learned Single Judge."**

On the aforesaid premise, the Corporation has taken the stand in impugned order that since the decision in Surendra Singh Chauhan's case has been affirmed by the Division Bench in appeal and has not been noticed in Bhagwan Singh's case or later Bench decision, the Corporation has issued the direction to withdraw all conductors from Booking Windows except to the extent noticed above.

This contention is not well founded. It may be noticed that the learned Single Judge has premised its conclusion on assumed factual foundation "where there is specific denial of the respondents that petitioner never gave such option to be absorbed as Booking Clerk merely working as Booking Clerk from time to time does not create any right in favour of the petitioner to be treated as Booking Clerk for all times to come."

The learned Single Judge in Surendra Singh Chauhan's case as noticed above, was solely founded on the premise that the petitioners were required to give option to discharge the duties as a Booking Clerk but the learned Single Judge has opined that no proof of giving such option having been filled by the petitioners, they

cannot claim their appointments as Booking Clerk as a matter of right.

The Division Bench in its short judgment noticed above has assumed on factual findings of learned Single Judge that law has been correctly applied. It may be noticed that the matter of option has been noticed in earlier S.B. Judgment, appeal against which has also been dismissed and later decision at the premise about need of option to create a right.

It was precisely noticed by the Division Bench in Bhagwan Singh's case while considering Surendra Singh's case that the terms unfold that option was otherwise available to any incumbent who did not want to be appointed as Booking Clerk and opt the duty out of it. Otherwise it would be taken, if no option is submitted, that the incumbent has no objection to be posted and discharge the duties as Booking Clerk in order of their seniority against the available post of Adda Clerk, now re designated as Booking Clerk. That being the position the reasoning which has weighed with the learned Single Judge in Surendra Singh Chauhan's case and which also was affirmed had fully been dealt with by the Division Bench

and demonstrably found that factual foundation on which the judgment of the learned Single Judge was proceeded was non-existent. The Division Bench as per the judgment under appeal has not examined the correctness of factual foundation but has accepted the same application of principle for classifying the senior conductors posted as Booking Clerks for years on the basis of Annexure R/7. In view of aforesaid analysis of factual foundation of Surendra Singh's case, it must be held with utmost respect, that the Division Bench decision in D.B.Special Appeal (Writ) No. 755/98 (Surendra Singh Vs. RSRTC) decided on 18.9.98, has been founded on non existent factual premise as found in Bhagwan Singh's case, was per incurium.

In this respect, the facts noticed by this Court in Bhagwan Singh's case (2002) 1 WLC 554 are apt:

> "The option form which has been supplied to conductors shows that if the option is not exercised within the time stipulated then it shall be deemed that according to seniority of conductor, they are willing to be posted on the post of Booking Clerk. The conductor according to his seniority is not willing to be posted as Booking Clerk may fill his option expressing his unwillingness to join on the post of Booking

Clerk."

It may further be noticed that the Division Bench in both these cases of Surendra Singh as well as in Bhagwan Singh's case was presided over by the same Hon'ble Judges. Lastly, it was contended that only such conductors who were appointed until 31.12.75 can avail the benefit of posting as Booking Clerk and not those who had been appointed later. Learned counsel relied on the fact that seniority list of conductors lastly prepared was only of such conductors who had been appointed until 31.12.71. For this, reliance has also been placed on Annexure R/7.

A perusal of Annexure R/7 clearly states that this factual matrix of appointment of persons on the post since 1.1.76 as Booking Clerk was accepted, but after 1.1.76, if any person has been reserved to discharge the duties of Booking Clerk, he may be discharged from the said post and be sent to the route.

There is no justification for this discrimination. The settlement was arrived at much later and was being acted upon at least until 1998 when these disputes arose.

There is no rational nexus with the object sought to be achieved by drawing this line. Merely because the Corporation has issued a seniority list only of such conductors in 1975 does not take away the effect of settlement and its operation on entire cadre strength.

On our enquiry, there was no specific explanation that other arrangements have been made for regarding the Booking Clerk's recruitment by independent method to man the Booking Windows otherwise them under the settlement so as to discharge the function at the booking windows or that whether the settlement between its workmen and conductors has been validly repudiated. The answer was in the negative. If that is so, the directions issued in Bhagwan Singh's case of manning the operation of Booking Window from amongst senior most conductors and only those conductors attached en route duties who are the junior most for whom there is no post available be posted, under distinction on their own option, cannot lost sight of. It does not even taken into account the position that the persons who have been appointed after 31.12.1975 have retired from the office on completion of age of superannuation or on further promotion case. In the absence of any such alternative

statutory scheme, the directions of this Court given earlier in Mohan Lal's case which were reiterated and recirculated in Bhagwan Singh's cases are nullified by such executive orders.

The appointment as Booking Clerk from amongst senior most Booking Clerk was not dependent on any option exercised for such posting. As we have already noticed the judgment under appeal has not noticed any of the judgment which has come prior to it on the point that the posts of Booking Clerk at various Bus Stands and the Booking Office were manned under the Ministerial cadre services which have been declared a dying post."

Accordingly, the appeals are allowed. The impugned orders are quashed. The judgment under appeal dealing with each of the case is set aside. The transfers of petitioner-appellant in each case from Booking Clerk to the en route duties is non-speaking. Relegation of a person appointed as Booking Clerk to the post of Conductor may be made strictly in pursuance of the directions by this Court in Bhagwan Singh's case for the purpose of manning the requirement of Booking Windows at different places of the State from amongst the senior

most conductors, who have not opted to be otherwise out of the booking windows.

There shall be no order as to costs.

**(R.S. CHAUHAN)J.** **(RAJESH BALIA)J.**

Anil/